

**The Malawi Gazette Supplement, dated 30th January, 2015, containing  
a Bill**

**NOTICE**

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The following Bill, for introduction in Parliament, is published for general information.

LILONGWE, 30th January, 2015.

R. L. GONDWE  
*Acting Clerk of Parliament*

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**MARRIAGE, DIVORCE AND FAMILY RELATIONS BILL, 2015**

**MEMORANDUM**

This Bill seeks to implement the recommendations of a special Law Commission contained in the report of the Law Commission on the Review of the Laws on Marriage and Divorce (Law Commission Report No. 16) published on 26th June, 2006.

*Background*

In September, 2001, the Government, in response to the new and emerging socio-political dispensation in Malawi, and also, in recognition of the commitment to international and regional instruments on gender equality Government's and women's empowerment, through the Law Commission, constituted a special Law Commission (the "Commission") to undertake a review of the laws of Malawi in accordance with Government's policy to promote gender equality and the empowerment of women in all spheres of life in Malawi.

In November, 2002, the Commission conducted two workshops with stakeholders; one with gender stakeholders and the other with the Parliamentary Women Caucus, for the purpose of setting priority for the law reform process. The Commission identified three areas of law in urgent need of reform or development, namely, the law on succession, especially the issue of property grabbing; the laws on marriage and divorce; and the development of a gender equality statute. This Bill relates to reforms on the laws relating to marriage and divorce;

*Law on Marriage and Divorce*

The core statutes on marriage and divorce were enacted in pre-independence Malawi. With the advent of coming into force of the Republican Constitution of 1994, a number of critical constitutional developments have taken place in Malawi. The country has since evolved from a legal system based on parliamen-

tary supremacy to one based on constitutional supremacy with an entrenched bill of rights. The paradigm shift has consequences on the rights and obligations of persons, including parties in a marriage contract, and it is critical, therefore, that these constitutional developments are properly articulated in the scheme of the laws on marriage and divorce. Further, Malawi has an obligation to meet international legal standards in its laws, and the laws on marriage and divorce are no exception from that perspective.

#### *Establishment of a Unified Regime on the Law on Marriage*

The Commission, among other things, noted that the current status of the law on marriage is unsatisfactory as it is determined by three types of marriages, and each regime of marriage has a different set of rights and obligations. This creates various problems in terms of equality. These problems are further compounded by the fact that the laws governing the three regimes of marriage are derived from different sources, making them inaccessible and confusing for the majority of the population. The Commission, therefore, recommended that there must be one law in Malawi that consolidates statutory and customary laws on marriage and divorce.

The Bill, in effect, proposes to consolidate statutory and customary laws on marriage and divorce. This entails the repeal of the statutory laws on marriage and divorce, namely, the Marriage Act, the African Marriage (Christian Rites) Registration Act, the Asiatics (Marriage, Divorce and Succession) Act, the Divorce Act, the Married Women (Maintenance) Act, and the Maintenance Orders (Enforcement) Act, and those aspects of customary laws on marriage and divorce governing the rights and obligations of the parties, maintenance, custody of children and divorce.

The Bill also proposes the retention of the current marriage regimes, in so far as the preliminary formalities for entering into marriage are concerned. However, under the new scheme, the rights and obligations of parties to any marriage, regardless of the applicable formalities under which the marriage was contracted, shall remain the same.

The Bill identifies and stipulates the types of formalities that may be validly followed by parties under a marriage contract, namely, the capacity of parties to enter into a marriage contract; matters of formality under a marriage contract; the rights and obligations of parties under a marriage contract during the subsistence of, and at the dissolution of, the marriage; and maintenance of parties during the subsistence and dissolution of marriage.

The title of the Bill—"Marriage, Divorce and Family Relations Bill"—and the long title which reads as follows—

"An Act to make provision for marriage, divorce and family relations between spouses and between unmarried persons, their welfare and maintenance and that of their children; and for connected matters",

reflects the fact that it goes beyond the regulation of the relationship of a

husband and wife or two persons living together in a conjugal relationship, but regulates other aspects of a family relationship.

### *Status and Effect of Current Marriage Regimes under the Proposed New Legislation*

The Commission observed that the present state of the law of marriage perpetuates inequalities due to the differences between the rights and obligations available to spouses under each of the regimes of marriage. The lack of certainty as to the extent, if any, of rights and obligations available to spouses married by repute or permanent cohabitation further exacerbates this inequality. The Commission noted that the State and society have a duty to protect all the parties to a marriage contract in order to realise their rights under a marriage.

Consequently, the Bill proposes that all the types of marriage will be recognized under the proposed new legislation, namely, a civil marriage; a customary marriage; a religious marriage; or marriage by repute or permanent cohabitation.

The Commission noted that since the proposed new legislation introduces equal rights and obligations to all married couples, regardless of the formalities that they went through, it would be unfair for couples who celebrated their marriages before the new Act comes into operation not to benefit from it. The Commission considered that in fostering the right of equality before the law granted under section 20 of the Constitution, all parties who celebrated their marriages before the new law comes into operation should also benefit from equal treatment in terms of rights and obligations of parties to a marriage under the proposed new law. The Commission, therefore, recommended that the new legislation applies retroactively to the marriages celebrated prior to its coming into force. This will allow those Parts of the new law governing the rights and obligations of parties to a marriage, divorce, maintenance and custody of children to apply to all marriages regardless of the date those marriages were celebrated.

The Bill, therefore, proposes that the new proposed legislation shall apply to marriages contracted on or after the day the legislation comes into operation; but Part IX will apply to all marriages regardless of the date they were celebrated.

### *Issues for Reform*

In addition to the need for a unified and comprehensive law on marriage, divorce and family relations, the Commission noted that each of the different marriage regimes is replete with its own gender-related problems that must be addressed in the proposed new law, and in this regard, the Bill proposes several substantive reforms.

### *Polygamy*

The Bill retains the status quo in terms of polygamy. As such, polygamy is

prohibited only with respect to statutory marriages (civil marriages).

#### *Marriage by repute or permanent cohabitation*

The Commission also noted that the difference between marriages by repute or permanent cohabitation, on the one hand, and marriages under statute or custom, on the other, is that the former is only recognized after two people have lived together or have been reputed to have conducted themselves in a manner similar to spouses. There is no requirement of formality and there is no guarantee that the courts will decide that any such relationship was in fact a marriage. The current scenario, therefore, causes hardship to parties in such marriages, especially women, who may find themselves with no right to succession or inheritance; distribution of property, maintenance or even to custody of children at the dissolution of the marriage. The Commission, therefore, recommended that the proposed new law should regulate marriages by repute or permanent cohabitation by setting clear guidelines on the requisite extent of repute or length of cohabitation necessary to constitute such a marriage.

#### *Capacity to Marry*

##### *Age*

The Commission considered the lack of consistency as to the age of marriage within the various regimes of marriage unsatisfactory; only statutory marriages set the age of 18 years as the minimum age for marriage. Both customary marriages and religious marriages have no fixed age requirement and the attainment of puberty tends to be a critical determinant of capacity to marry.

The Commission noted that under subsection (6) of section 22 of the Constitution a person of eighteen years of age may enter into a marriage without first seeking the consent of his or her parents; and under subsection (7) of section 22 of the Constitution, persons aged between fifteen and eighteen years must obtain parental consent before they can validly enter into a marriage contract.

The Commission noted that in the case of the girl child, marriage under the age of eighteen years is a health hazard; early marriage also has negative development implications, and unless early marriages involving girls are discouraged, the attainment of the Millenium Development Goals; especially Goal 3, which emphasizes the need for girl child education, or the goal on Human Capital Development under the Poverty Reduction Strategy Paper, may be elusive.

In light of the foregoing, the Commission recommended, and the Bill proposes, the following provision on capacity to enter a valid marriage—

“Subject to section 22 of the Constitution, two persons of the opposite sex who are both not below the age of eighteen years, and are of sound mind, may enter into marriage with each other.”.

#### **B. No. 5**

*Sex*

The Commission observed that the scheme of the law on the various types of marriages in Malawi presupposes a heterosexual union. The Commission was aware of instances where persons have undergone "sex change" operations and the legal debates that ensue in those cases when it comes to capacity to marry.

The Commission maintained the position at common law as regards the sex of a person; that sex is determined at birth, hence sex, for purposes of marriage, will continue to be regarded as one's sex at birth. Such a determination of sex at birth avoids any potential problems caused by transsexuals or persons who have undergone sex-changing surgery later in life from marrying a person who, prior to that sex-changing surgery, was of the same sex as them.

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**MARRIAGE, DIVORCE AND FAMILY RELATIONS BILL, 2015**

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**A B I L L**

*entitled*

**An Act to make provision for marriage, divorce and family relations between spouses and between unmarried couples, their welfare and maintenance, and that of their children; and for connected matters**

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Marriage, Divorce and Family Relations Act, 2015, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette*.

Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“adultery” means voluntary sexual intercourse by a married person with a person other than his or her spouse;

“certified copy”, in relation to an order of a court, means a copy of the order certified by a proper officer of the court to be a true copy of the order;

“child” means a person who is below the age of eighteen years;

“civil marriage” means a marriage celebrated by a registrar in accordance with Part IV and Part VII, respectively;

“cleric” means a recognized cleric or minister of a religion, religious body, denomination or sect, belonging to a place of worship licensed as a place for the celebration of marriage under section 11;

“cohabitation” means the fact of a man and a woman, not married to each other in accordance with this Act, living together as, or as if they were, husband and wife;

“consortium” means the fact of a husband and wife living together, and includes a right to consummation, companionship, care, maintenance and rights and obligations commensurate with the status of marriage;

“country” includes any protected State and any trust territory administered by the Government of any country;

“court” means the High Court or other court having jurisdiction as specified under this Act and, in relation to any claim within its jurisdiction, includes a traditional or local court;

“customary marriage” means a marriage celebrated in accordance with rites under the customary law of one or both of the parties to the marriage;

“dependant”, in relation to another person against whom there is a maintenance order by a court or tribunal of a foreign country, means such person as that other person is, according to the law in force in that foreign country, liable to maintain;

“habitual drunkard” includes a person whose excessive drinking of liquor or taking of habit forming substances prevents or otherwise makes him or her unable to provide reasonable maintenance for a spouse or any child of the marriage dependent on such person;

“irretrievable breakdown of marriage” means a situation where one or both of the spouses prove to the court that they can no longer live together in consortium as husband and wife;

“judicial separation” means the separation of a husband and wife by court decree;

“maintenance order” means an order for the payment in cash or of a specified cash value towards the maintenance of a spouse, a single pregnant woman, a child, a dependant, or a person entitled to maintenance under this Act;

“marriage notice” means the prescribed notice of marriage required under this Act;

“Marriage Register Book” means a book of register issued to every registrar for the registration of marriages under this Act;

“matrimonial property” includes—

- (a) the matrimonial home or homes;
- (b) household property in the matrimonial home or homes;
- (c) any other property whether movable or immovable acquired during the subsistence of a marriage which by express or implied agreement between the spouses or by their conduct is used, treated or otherwise regarded as matrimonial property;

“non-monetary contribution” means the contribution made by a spouse for the maintenance, welfare or advancement of the family other than by way of money, and includes—

- (a) domestic work and management of the home;
- (b) childcare;
- (c) companionship;
- (d) the endurance of the marriage; or
- (e) any other manner or form of contribution as the court may consider appropriate;

“permit” means a certificate issued by the Registrar under section 24 or section 28, as the case may be, after the preliminary formalities of marriage have been completed permitting the parties to celebrate their marriage;

“registrar” means the Registrar of Marriages or other public officer or other person acting under his or her authority as specified under section 4 (3);

‘Registrar of Marriages’ means the public officer designated as such under section 4;

“religious marriage” means a marriage celebrated by a cleric in accordance with the recognized rites of a religion, religious body, denomination or sect to which one or both parties to the marriage belong;

‘sex’, in relation to the gender of a person, means the sex of that person at birth;

3. This Act shall apply to marriages entered into on or after the day it comes into operation; but Part IX shall apply to all marriages regardless of the date they were celebrated.

#### PART II—GENERAL

Registrar of  
Marriages

4.—(1) There shall be the office of the Registrar of Marriages which shall be a public office.

(2) The officer for the time being holding or acting in the office of Registrar General shall be the Registrar of Marriages.

(3) The following offices shall perform the functions of the Registrar of Marriages subject to the general or special direction of the Registrar of Marriages (and are, in this Act, hereinafter referred to as “registrars”)—

(a) the District Commissioner in respect of the district of his or her jurisdiction;

(b) a traditional authority with powers to register a marriage under the Act; and

(c) a cleric.

Publication of  
list of registrars

5. The Minister shall, by order published in the *Gazette*, publish a list of registrars of marriages under this Act.

Registrars to  
be provided  
with books  
of marriage  
certificates  
*First Schedule*

6.—(1) The Registrar of Marriages shall deliver to the several registrars marriage register books in duplicate and with counterfoil in Form A in the *First Schedule*.

(2) The several registrars shall have custody of the books of marriage certificates delivered to them.

Registration of  
marriages

7. Every marriage celebrated in accordance with this Act shall be registered by a registrar.

Marriage  
Register Book  
*First Schedule*

8.—(1) A registrar shall enter into the Marriage Register Book all particulars of certificates of marriage which have been filed in his or her office, place of worship or work in Form A in the *First Schedule*.

(2) An entry under subsection (1) shall be—

(a) made in its chronological order;

(b) signed by a registrar; and

(c) indexed in a manner that is best suited for easy reference.

(3) A registrar shall make the Marriage Register Book available for inspection during office hours and shall on application make certified copies from it upon payment of a fee prescribed in the *Second Schedule*.

*Second  
Schedule*

(4) Within ten days after the last day of each month, every registrar shall send to the Registrar of marriages a certified copy of all entries made by him or her in the Marriage Register Book during the preceding month, and the Registrar of marriages shall file the certified copy in his or her office.

9.—(1) A registrar may correct a clerical error in any certificate of marriage filed in his or her office upon the production of the certificate delivered by any party to the marriage.

Correction of clerical errors in marriage certificates

(2) A registrar shall authenticate any correction in a certificate of marriage by his or her signature, official stamp and the date of the correction.

10. The following shall be admissible as evidence of a marriage to which it relates—

Evidence of marriage

- (a) a certificate of marriage filed in the office of a registrar;
- (b) a copy of a certificate of marriage, signed and certified as a true copy by a registrar;
- (c) an entry in a Marriage Register Book; or
- (d) a signed and certified copy of an entry in a Marriage Register Book.

11.—(1) The Minister may, upon application, license any place of worship to be a place for the celebration of marriages under this Act.

Minister to license places of worship to celebrate marriages

(2) Notwithstanding subsection (1), a place of worship shall not be licensed unless the applicant or the person in charge of the place of worship has legal personality under the Trustees Incorporation Act or any other written law to operate the place of worship.

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(3) The Minister may, at any time, revoke the licence under subsection (1) if he or she satisfied upon reasonable grounds that a place is not fit for the celebration of marriages under this Act.

(4) The Minister shall give notice of the licensing of a place of worship or the revocation of the licence—

- (a) in the *Gazette*; and
- (b) to the person in charge of the place of worship.

12.—(1) A marriage recognized under this Act shall be either—

Marriages recognized under the Act

- (a) a civil marriage;
- (b) a customary marriage;
- (c) a religious marriage; or
- (d) a marriage by repute or permanent cohabitation.

(2) A marriage conducted in accordance with the laws of another country, where one or both of the parties is subject to the laws of that country, shall be recognized in Malawi as a valid marriage.

(3) All marriages recognized under this Act shall have the same legal status.

(4) Without prejudice to any procedures prescribed for marriage under this Act, any institution or procedure that traditionally facilitates the celebration of a customary marriage shall continue to be recognized as such under this Act.

Marriage by  
repute or  
permanent  
cohabitation

**13.** A marriage by repute or permanent cohabitation shall only be recognized under this Act upon a finding of a court of competent jurisdiction where that court considers—

(a) the length of the relationship, which, in any event, shall not be less than five (5) years;

(b) the fact of cohabitation;

(c) the existence of a conjugal relationship;

(d) the degree of financial dependence or interdependence and any agreement for financial support between the parties;

(e) ownership, use and acquisition of property;

(f) the degree of mutual commitment to a shared life;

(g) whether the parties mutually have, care for, or support, children;

(h) the reputation of the parties in the community as being married and the public display of aspects of their shared relation; and

(i) any other factors that the court considers fit.

### PART III—ESSENTIAL ELEMENTS OF MARRIAGE

Capacity to  
enter into a  
valid marriage

**14.** Subject to section 22 of the Constitution, two persons of the opposite sex who are both not below the age of eighteen years, and are of sound mind, may enter into marriage with each other.

Marriages  
within  
prohibited  
degrees of  
kindred and  
affinity  
*Third Schedule*

**15.** A marriage celebrated between—

(a) a man and any of the persons mentioned in the First Column of Parts I, II, and III of the *Third Schedule*;

(b) a woman and any of the persons mentioned in the Second Column of Parts I, II, and III of the *Third Schedule*,

shall not be valid on the ground of kindred or affinity.

Explanations  
to be given  
by a registrar

**16.** A registrar shall explain to the parties intending to marry the prohibited degrees of kindred or affinity, the prohibition on

polygamy and the penalties which may be suffered for offences under this Act, and shall cause the parties to sign a prescribed form of acknowledgement of such explanation in Form K in the *First Schedule*.

PART IV—PRELIMINARIES TO A CIVIL MARRIAGE

17. A person entering into a marriage under this Part shall first prove, by way of declaration before a registrar, that he or she is single.

Declaration of marital status prior to marriage

18. A person who contracts a civil marriage shall be married to one spouse only.

Prohibition of polygamy in a civil marriage

19.—(1) A party to an intended marriage shall sign and give to the registrar a notice in Form B in the *First Schedule*.

Notice in a civil marriage  
*First Schedule*

(2) Where the party to the intended marriage giving the notice desires the marriage to be celebrated in a district other than that in which he or she resides, that party shall so inform the registrar accordingly.

(3) If a marriage is intended to be celebrated in another district, the registrar of the original district shall forward a copy of the notice to the registrar of the other district, and immediately upon receiving the notice, the other registrar shall affix the notice onto the outer door of his or her office or place of worship or work.

20.—(1) If the person giving notice under section 19 is unable to or understand the English language, it shall be sufficient if he or she places a mark or a cross as appropriate in the presence of a person literate in the English language and that person shall attest the marking or crossing.

Signature of notice by person unable to write or understand the English language

(2) An attestation made under subsection (1) shall be in Form C in the *First Schedule*.

*First Schedule*

21. Every registrar shall supply forms of the notice under section 19 without charge to any person applying for them.

Registrars to supply forms of notice

22. A registrar shall enter the notice under section 19 in the Marriage Notice Book.

Notice to be entered in Marriage Notice Book and published

23. After entering a notice of marriage in the Marriage Notice Book, the registrar shall publish the notice by affixing a copy of it onto the outer door to his or her office or place of worship or work,

Publication of a marriage notice



there to be kept exposed until he or she grants a permit, or until three months have elapsed, whichever is the sooner.

Issue of a registrar's permit in a civil marriage  
*First Schedule*

24. A registrar who receives the notice under section 19 shall at any time after the expiry of twenty-one days and before the expiry of three months from the date of the notice, issue a permit in Form D in the *First Schedule* if he or she is satisfied that—

(a) the parties have complied with sections 14, 15, 17 and 18;

(b) one or both of the parties has or have been resident within the district at least fifteen days preceding the granting of the permit;

(c) there is no caveat under section 30 lodged against the marriage or if a caveat has been lodged, it has been removed in accordance with the procedure set out in Part VI;

(d) the parties are not within the prohibited degrees of kindred or affinity; or

(e) neither of the parties to the intended marriage is married to another person.

Power of Minister to grant special licence

25. The Minister, upon proof being made to him or her by affidavit that there is no lawful impediment to a proposed marriage, may, in his or her discretion, dispense with the giving of notice, and with the issue of the permit of registrar, and may grant a special licence, in Form E in the *First Schedule*, authorizing the celebration of a marriage between the parties named in the licence by a registrar.

#### PART V—PRELIMINARIES TO RELIGIOUS AND CUSTOMARY MARRIAGES

Marriages under this Part to accord with customs and rites of religious body, sect, denomination or ethnic groups

26. Subject to sections 14 and 15, the procedures preceding the celebration of a religious or customary marriage shall be governed by the customs or rites which are usual among the ethnic group, religion or sect under which the marriage is celebrated.

Notice of intention to marry

*First Schedule*

27.—(1) A person intending to marry under this Part shall, in addition to the customs or rites referred to in section 26, give notice of intention to marry in writing to a registrar in Form B in the *First Schedule*.

(2) he registrar shall enter the notice in the Marriage Notice Book.

(3) The notice shall be displayed for twenty-one days in a conspicuous place on the premises of the office of the registrar.

28.—(1) At the expiry of the twenty-one days referred to in section 27, the registrar shall issue a marriage permit in Form D in the *First Schedule*.

Issue of a registrar's permit in a customary or religious marriage  
*First Schedule*

(2) A marriage permit under subsection (1) shall be issued if—

(a) the parties have complied with sections 14 and 15; and

(b) there is no caveat under section 30 lodged against the marriage or if a caveat was lodged, it has been removed in accordance with the procedure set out in Part VI.

PART VI—OBJECTIONS TO ALL MARRIAGES RECOGNIZED UNDER THE ACT

29.—(1) Except as provided in section 31 (5), a marriage shall take place within three months after the date of the notice.

Marriage to take place within three months after date of notice

(2) Failure to comply with subsection (1) shall render the notice and all the proceedings consequent upon it void, and a fresh notice shall be given before the parties can lawfully marry.

30.—(1) A person who knows of any just cause why a marriage should not take place may enter a caveat against the issue of a permit, by—

Caveat

(a) writing at any time before its issue the word “Forbidden”, opposite to the entry of the notice in the Marriage Notice Book; and

(b) appending his or her name and address and the grounds upon which the claim to forbid the issue of the permit is made.

(2) A registrar shall not issue a permit until the caveat is removed as provided in sections 31 and 32.

31.—(1) Where a caveat is lodged in accordance with section 30, a registrar shall refer the matter to a court of competent jurisdiction.

Caveat to be referred to court

(2) The court to which a caveat is referred shall summon and hear the parties to the intended marriage and the person who made the objection to show cause why a permit should not be issued.

(3) The court shall determine the matter by summary procedure.

(4) If the court decides that the permit should be issued, it shall remove the caveat—

(a) by cancelling the word “Forbidden” in the Marriage Notice Book;

(b) by writing below the cancellation, the words “cancelled by order of the court”;

(c) by appending the signature of the judicial officer and the court seal to the entry.

(5) The registrar shall proceed to issue a permit and the marriage shall proceed as if the caveat had not been entered, but the time that has elapsed between the entering and the removal of the caveat shall not be computed in the period of three months under section 29.

Compensation  
and costs for  
wrongful  
caveat

32. A court may, upon application, award compensation and costs to an injured party if it appears that a caveat was entered based on insufficient caveat grounds.

#### PART VII—CELEBRATION OF CIVIL MARRIAGE

Marriage in  
a registrar's  
office

33. After the issue of a permit under section 24, or of a licence under section 25, the parties may contract a marriage before a registrar—

(a) with open doors, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon, and in the manner prescribed in section 34; and

(b) in the presence of two or more witnesses.

Oath to be  
administered in  
civil marriages  
*First Schedule*

34. A registrar, after production to him or her of the permit or licence, shall administer the oath of marriage in Form F in the *First Schedule*.

Marriage  
certificate  
to be signed

35. Immediately after the celebration of a civil marriage, the Registrar shall—

*First Schedule*

(a) complete in duplicate a marriage certificate in Form G in the *First Schedule*;

(b) state and enter in the counterfoil, the number of the certificate, the date of the marriage, the names of the parties, and the names of the witnesses; and

(c) deliver one copy of the certificate to the parties and file the other in his office.

Marriage under  
special licence

36. Where a special licence authorises the celebration of marriage at a place other than the office of a registrar, the registrar shall, upon the production of the licence, deliver to the person producing it a blank certificate of marriage in duplicate and shall comply with section 35.

#### PART VIII—CELEBRATION OF CUSTOMARY AND RELIGIOUS MARRIAGES

37. A customary or religious marriage shall be celebrated in accordance with the procedures and formalities under Part V.

Application of Part V to marriages under this Part

38. The Minister shall deliver to every Traditional Authority Marriage Register Books in which each Traditional Authority shall record particulars of all customary marriages celebrated in his or her area of authority.

Traditional Authority to register marriages

39.—(1) A religious marriage may be celebrated in a place of worship which has been duly licensed by the Minister under section 11 or in any place that the Minister may by special licence direct in accordance with the rites of a religion or religious body, denomination or sect to which one or both of the parties belong.

Marriage in a licensed place of worship

(2) A marriage celebrated under subsection (1) shall be celebrated—

(a) with open doors between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon; and

(b) in the presence of two or more witnesses, who shall include the marriage advocates of the parties to the marriage recognized as such at custom, besides the registrar.

(3) A witness to a marriage shall be a person who is above eighteen years of age and of sound mind.

40. A registrar celebrating a customary or religious marriage shall administer an oath, if any, as prescribed either by the religion or custom of one or both of the parties to the marriage.

Oath to be administered in customary and religious marriages

41. A registrar shall not celebrate any marriage if he or she knows of any just impediment to such marriage, nor until the parties deliver to him or her a permit under section 28.

Registrar not to celebrate marriage where there is impediment nor without permit

42. Where a special licence authorizes the celebration of a customary or religious marriage other than at the office, place of worship or work of a registrar, the registrar shall, upon receipt of the licence, proceed to celebrate the marriage and complete the certificate of marriage in Form G in the *First Schedule* in duplicate after strictly observing all the formalities for customary and religious marriages prescribed under this Act.

Customary or religious marriages under special licence  
*First Schedule*

43.—(1) A registrar who celebrates a customary or religious marriage under this Act shall keep a register of the celebration in Form H in the *First Schedule*, and shall make and sign in the

Register of customary or religious marriages  
*First Schedule*

Marriage Register Book an entry of every marriage celebrated by him or her.

(2) A registrar shall as soon as possible after the 31st December in each year, send to the Registrar of marriages a copy of the Register of all marriages celebrated during the past year by any person delegated by him or her to celebrate marriages.

Entries to be made in marriage certificate  
*First Schedule*

44. Immediately after the celebration of a customary or religious marriage, a registrar shall complete in duplicate a marriage certificate in Form F in the *First Schedule*, and also state and enter in the counterfoil the number of the certificate, the date of the marriage, names of the parties, and the names of the witnesses.

Signature to marriage certificate

45. A registrar, the parties to a marriage, and two or more witnesses to the marriage shall sign the certificate of marriage in duplicate.

Duplicate certificate to be sent to the Registrar

46. In addition to signing the certificate as required by section 45, a registrar celebrating a customary or religious marriage shall deliver the duplicate copy of the marriage certificate to the Registrar of Marriages.

Marriage certificate to be registered

47. The Registrar of Marriages shall file the duplicate copy of the marriage certificate in the Marriage Register Book kept in his or her office.

#### PART IX—RIGHTS AND OBLIGATIONS OF PARTIES TO A MARRIAGE

Right to consortium

48.—(1) A party to a marriage is entitled to equal rights as the other in their right to consortium.

(2) A wife is entitled to retain her maiden name or to use the surname of her husband, or both, during the subsistence of the marriage.

(3) A wife is entitled to the continued use of the surname of her husband at the dissolution of the marriage, unless it is proved before a court that she used the name for an improper purpose or a fraudulent motive.

(4) Notwithstanding any other written law to the contrary in force at the commencement of this Act, a spouse has the right to retain his or her nationality or citizenship during the subsistence of the marriage.

(5) A spouse may severally, or jointly with the other, exercise responsibility towards the upbringing, nurturing and maintenance of the children of the marriage.

(6) Both spouses shall have the right to mutual custody of the children of the marriage during the subsistence of the marriage.

(7) Notwithstanding subsection (1), a spouse may deny the other spouse the right to consummation on reasonable grounds which may include—

- (a) poor health;
- (b) post-natal recuperation;
- (c) post surgical convalescence;
- (d) reasonable fear that engaging in sexual intercourse is likely to cause physical or psychological injury or harm to either spouse; or
- (e) reasonable respect for custom.

49.—(1) A spouse is entitled to mutual trust and confidences during the subsistence of a marriage and, in the event of the dissolution of the marriage, after its dissolution.

Right to mutual marital confidences

(2) Notwithstanding subsection (1), a spouse may disclose information if the disclosure is in the interests of justice as required—

- (a) under the Criminal Procedure and Evidence Code or other written law; or
- (b) in divorce proceedings.

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50.—(1) Subject to subsections (2) and (3), both spouses have a duty to maintain each other and any children of the marriage.

Duty to maintain family

(2) The monetary contribution of each spouse shall be proportionate to his or her income.

(3) The non-monetary contribution of each spouse shall also be taken into account when determining the contribution of a spouse to the maintenance of the other spouse or children of the marriage.

PART X—OFFENCES AND PENALTIES RELATING TO MARRIAGE

51. A person who contracts a civil marriage under Part VII and who subsequently is married or purports to be married, to more than one spouse, commits an offence, and is liable on conviction to a fine of K100,000 and imprisonment for five years.

Polygamy and bigamy in a civil marriage

52. An unmarried person who goes through the ceremony of a civil marriage with a person whom he or she knows to be married to another person, commits an offence and is liable on conviction to a fine of K100,000 and imprisonment for twelve months.

Marriage ceremony with a married person

Making false declarations in relation to marriage

**53.** A person who makes or issues a false declaration, certificate, permit, licence, document or statement by law for the purpose of marriage commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for twelve months.

Registrar unlawfully performing ceremony

**54.** A registrar who performs the ceremony of marriage knowing that any of the matters required by law for the validity of a marriage have not been fulfilled, so that the marriage is void on any of those matters, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Unlawful performance of ceremony by person not legally competent

**55.** A person who knowingly and willfully celebrates or purports to celebrate a marriage when he or she is not competent under this Act to do so commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Willful neglect of duty to fill up or transmit certificate of marriage

**56.** A person who is charged with the duty to complete the marriage certificate of a marriage celebrated by him or her, or its duplicate, or to deliver the certificate to the Registrar of Marriages, and who willfully fails to perform his or her duty, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Personation in marriage

**57.** A person who—

(a) impersonates another person in entering into marriage; or

(b) marries under a false name or description with the intention to deceive the other party to the marriage,

commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

Fictitious marriage

**58.** A person who goes through the ceremony of marriage, or any ceremony which he or she represents to be a ceremony of marriage, knowing that the marriage is void on any ground, and that the other person believes it to be valid, commits an offence and is liable on conviction to a fine of K100,000 and to imprisonment for five years.

#### PART XI—DIVORCE, JUDICIAL SEPARATION AND NULLITY OF MARRIAGE

General principles

**59.—**(1) In exercising a function under this Part, a court shall have regard to the following general principles that—

(a) the institution of marriage is to be protected;

(b) the parties to a marriage which may have broken down are to take all practical steps, whether by counseling or otherwise, to save the marriage;

